IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

ORDER

SB CIVIL WRIT PETITION NO.4323/1994
State of Rajasthan & Ors.
V/s
Rajasthan civil Services Appellate Tribunal, Jaipur & anr.

Date of Order : : 16.11.2006

PRESENT
HON'BLE MR. JUSTICE P.S. ASOPA

Dr.A.S. Khangarot, Addl. GA, for the petitioners.
Mr.R.P. Sharma, for the respondent No.2.

This writ petition has been filed by the State Government against the judgment dated 11.5.1994 of the Rajasthan Civil Services Appellate Tribunal Rajasthan, Jaipur (For short “the Service Tribunal”) whereby it has been held that the respondent No.2 was entitled for promotion as Assistant Director on adhoc basis from the date his juniors were promoted by the impugned order dated 23.11.1990 for the reason that two adversities of APARs for the years 1982-83 and 1983-84 could not be taken into consideration on account of pendency of the representation. The Service Tribunal also issued direction for consequential benefits with the further direction that the adhoc promotion would continue till the adhoc promotion of his junior continued.

2. The State Government filed the present writ petition stating therein that the respondent No.2 has suppressed the fact of adverse entries in the APARs of the year 1982-83 and 1983-84, therefore, the appeal of the respondent No.2, who has not approached the Tribunal with the clean hands, was liable to be dismissed on this ground alone and the judgment of the Service Tribunal is liable to be set aside on merit also.

3. The respondent No.2 has filed reply to the writ petition and further in reply to para 5 of the writ petition categorically stated that he has mentioned at page 4 of the appeal regarding APARs of 1982-83 and 1983-84. The said stand was reiterated in para 2 of the rejoinder. The finding of the Service Tribunal that on the one hand the applicant is submitting that he has not been communicated adverse remarks and on the other hand, the finding given by the Tribunal that the representation is pending, is wholly uncalled for. It is stated in reply that ultimate finding of the Service Tribunal after going through the record is legal and proper.

4. The submission of counsel for the State is that the respondent No.2 – appellant has not approached the Service Tribunal with clean hands, therefore, the Tribunal ought to have dismissed the appeal on this ground alone. Counsel for the State further submits

that in view of the adversities in the APAr of 1982-83 and 1983-84, the petitioner has rightly not been promoted and the Service Tribunal has exceeded its jurisdiction in accepting the appeal.

5. The submission of counsel for the respondent No.2 is that there was no suppression and all the relevant facts have been again made clear in rejoinder. Apart from above, the Service Tribunal has called for the record and after going through the record has found that the rejection of the representation vide order dated 13.8.1985 is improper being without any basis as comments of the reviewing officer were sought in the year 1991 and the said representation was pending at the time of supersession and decision of the Service Tribunal and further the same was also pending at the time of his retirement. Counsel for the respondent No.2 has also submitted that it is well settled that adverse entries against which the representation is pending could not have been taken into consideration, but here in the instant case the same have been considered, therefore, the Tribunal has rightly accepted the appeal.

6. I have heard counsel for the parties and gone through the record of the writ petition and further considered rival submissions of the parties.

7. Counsel for the respondent No.2 has also placed

before me the memo of appeal wherein in para 6-A, the fact of adversities of the APARs of 1982-83 and 1983-84 has been mentioned, the same has also been referred in reply to para 5 of the writ petition, therefore, the finding of the Service Tribunal on the issue of suppression of fact is wholly unwarranted and uncalled for. As regard, merit of the case, the adverse entries against which the representation is pending, could not have been taken into consideration, therefore, the Service Tribunal has rightly accepted the appeal.

8. In view of above, the writ petition has no force and the same is dismissed.

(P.S. ASOPA) J.

ummed/-